In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 143

THE BALTIMORE & OHIO R. CO., ET AL., APPELLANTS

v.

THE ATCHISON, TOPEKA & SANTA FE RY. CO., ET AL., APPELLEES

No. 159

CHICAGO & NORTH WESTERN RY. CO., ET AL., APPELLANTS

v.

THE ATCHISON, TOPEKA & SANTA FE RY. CO., ET AL., APPELLEES

No. 576

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE ATCHISON, TOPEKA & SANTA FE RY. CO., ET AL., APPELLEES

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION IN RESPONSE TO THE SUGGESTIONS OF MOOTNESS AND IN OPPOSITION TO THE MOTIONS TO AFFIRM

On February 18, 1965, the district court set aside orders of the Interstate Commerce Commission which

prescribed new bases for dividing joint rail rates between more than 300 railroads performing transcontinental freight services.[1] In the proceeding before the Commission, the carriers had aligned themselves into three geographic groups—Eastern, Midwestern and Mountain Pacific—and the Commission's orders were based on findings as to costs of performance and revenue needs of the three railroad groups. The district court rejected the group findings as inadequate to satisfy the statutory requirements of Section 15(6) of the Interstate Commerce Act. It held that the Commission was required to make individual findings for each railroad with respect to each factor relevant, under Section 15(6), including specific revenue needs and the financial impact of the new divisions, in dollar amounts, for each carrier.

In our Jurisdictional Statement, filed on September 15, 1965, No. 576, O.T., 1965, we urged that this decision of the district court was in conflict with this Court's prior decisions and past Commission practice and that it would seriously impair the Commission's power effectively to conduct large rate divisions cases. Accordingly, we asked this Court to note probable jurisdiction. Jurisdictional Statements seeking

[1] One basis fixed the division of joint rates for transportation between Eastern and Mountain-Pacific territories. The other (1) prescribed new divisions between Midwestern and Transcontinental territories, and (2) increased the Midwestern share of joint rates for transportation between Eastern and Transcontinental territories as to which the Midwestern carriers performed intermediate service.

review of the district court's order were also filed by the Eastern carriers (No. 143) and by the Midwestern roads (No. 159).

Subsequent to the filing of these Jurisdictional Statements, the Eastern and Mountain Pacific railroads agreed among themselves to new divisions on transcontinental traffic which called for shares for the Eastern carriers higher than those which the Commission had sought to correct, but somewhat lower than the Commission-prescribed divisions. On January 7, 1966, the Commission granted the petition of the Eastern and Mountain Pacific lines to vacate its prior orders insofar as they prescribed divisions covered by this agreement. As a result, we agree with appellees' suggestion that the appeal in No. 143 is completely moot and that the appeal in No. 576 is moot insofar as it concerns revenue divisions of the agreeing parties.

Contrary to appellees' motion to affirm, however, we believe that the settlement between the Eastern and Mountain Pacific roads does not deprive the appeals in Nos. 159 and 576 of importance, thus making them inappropriate for plenary consideration by this Court. The settlement between the Eastern and the Mountain Pacific roads does not moot the Commission's orders insofar as they prescribe new divisions for the Midwestern roads (see footnote 1, *supra*, p. 2). The legal issues presented by the appeal of the Midwestern roads in No. 159 and the appeal in No. 576, where the United States and the Interstate Commerce Commis-

sion are the appellants, are therefore unaffected.[2] As detailed in our Jurisdictional Statement, the district court's construction of Section 15(6) of the Interstate Commerce Act substantially impairs, and perhaps entirely frustrates, the Commission's ability, in this as well as future cases, effectively to fulfill its duty to prescribe fair rate divisions.

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[2] Some of the Midwestern lines—not, however, including the major Midwestern roads—have entered a settlement agreement with appellees. A petition to vacate appendices C and C1 of the Commission's orders, insofar as they would apply to the divisions of the agreeing Midwestern roads, is now pending before the Commission.

[3] Appellees also contend (Motion to Affirm of Mountain-Pacific carriers, 31–33) that the district court order should be affirmed because of the Commission's failure to consider the revenue requirements represented by passenger deficits. In prescribing new divisions of joint rates, however, the Commission in fact considered the carrier groups' net railway operating income from all services (Jurisdictional Statement of Baltimore and Ohio Railroad Co., 88a–90a, 137a–142a). It observed that although the Mountain-Pacific carriers had experienced greater losses from passenger revenues than either of the other groups during the years 1950–1958, the Eastern and Midwestern lines' net railway operating income from all services was less favorable (B & O J.S. 82a–88a, 141a). Finally, contrary to appellees' assertion, the Commission's order in *Official-Southern Divisions*, 325 I.C.C. 1, 453–454, does not reflect a repudiation of the methods for prescribing divisions which the Commission applied in the instant proceeding. While the Commission's *Official-Southern* order prescribed new divisions between Eastern and Southern carriers on the basis of cost of service and the effect of the new divisions in dollar amounts, its findings were made as to carrier groups and not as to individual lines, as required by the district court in this case.

CONCLUSION

Probable jurisdiction should be noted in Nos. 159 and 576. The appeal in No. 143 should be dismissed as moot in light of the fact that all of the appealing railroads in that case have reached a settlement with the appellee railroads.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ROBERT W. GINNANE,
General Counsel,
Interstate Commerce Commission.

MARCH 1966.

U.S. GOVERNMENT PRINTING OFFICE:1966

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No. 576 23

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RY. CO., *et al.*, *Appellees*.

~~No. 576~~ 23

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEMORANDUM SUGGESTING MOOTNESS

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(Listed in Appendix A)

June 2, 1966

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

No. 576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RY. CO., *et al.*, *Appellees*.

No. 576

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEMORANDUM SUGGESTING MOOTNESS

Appellees listed in Appendix A hereto file this memorandum to advise the Court of facts which render moot portions of the cause in No. 576.

This case is an appeal from a Judgment of the District Court setting aside orders of the Interstate Commerce Commission in its Docket No. 31503 et al., dated March 21, 1963, and December 31, 1963, which prescribed new bases for dividing joint rates on transcontinental freight traffic. The Commission's orders under review would apply to the divisions of revenues as between appellee railroads serving Mountain-Pacific territory (west of the Rocky Mountains), on the one hand, and, on the other hand, railroads serving the Midwest and East.

In the instant case (No. 576), the United States and the Interstate Commerce Commission appealed from the Judgment below and probable jurisdiction was noted on April 4,

1966. *United States* v. *Atchison, Topeka & Santa Fe R. Co.*, 383 U.S. 964. Probable jurisdiction was also noted in the appeal of eight Midwestern railroads from the same Judgment. No. 159, *Chicago & North Western R. Co.* v. *Atchison, Topeka & Santa Fe R. Co.*, 383 U.S. 964.

The principal Eastern railroads also appealed from the Judgment below (No. 143). During the pendency of that appeal, the controversy over the divisions affecting those Eastern roads was settled and the prescribed divisions were vacated by order of the Commission dated January 7, 1966 (copy of this order is attached hereto as Appendix B). On April 4, 1966, this Court entered the following order: "the judgment is vacated as respects the parties to this appeal and to that extent the cause is remanded to the District Court with instructions to dismiss the case as moot." *Baltimore and Ohio R. Co.* v. *Atchison, Topeka & Santa Fe R. Co.*, 383 U.S. 832.

The purpose of this memorandum is to bring before this Court a further series of orders of the Commission, the latest dated April 13, 1966 (and served on April 25, 1966), vacating substantial portions of the orders of the Commission which are the subject of judicial review in the action on appeal in No. 576.

The Commission's original orders dated March 21, 1963 and December 31, 1963, which are the subject of this action, prescribed divisions on transcontinental traffic affecting practically all railroads serving the East and Midwest. Subsequent to the filing of the appeal in this case, the scope of the Commission's orders under review has been substantially narrowed by additional orders of the Commission, each of which vacated additional portions of the original orders dated March 21, 1963, and December 31,

1963. The further orders of the Commission are as follows:

(1) Order dated March 17, 1966, vacating the original orders with respect to divisions as between appellees and southern and western railroads serving Group E-5 (Southeastern Illinois) except for five named railroads that are appellants in No. 159 (copy attached hereto as Appendix C).

(2) Order dated April 13, 1966, vacating the original orders with respect to divisions as between the Chicago, Milwaukee, St. Paul and Pacific Railroad and Eastern railroads (copy attached hereto as Appendix D).

(3) Order dated April 13, 1966, vacating the original orders with respect to divisions as between appellees and a number of railroads serving the Midwest (copy attached hereto as Appendix E). This order terminates the controversy with respect to substantially all Midwestern railroads except the eight appellants in No. 159 and certain of their subsidiaries and short-line connections.

The effect of the foregoing orders of the Commission, vacating substantial portions of its original orders, is to terminate the controversy with respect to many of the divisions prescribed in the original orders of the Commission which were set aside by the Judgment now on appeal. The only remaining controversy relates to that portion of the original orders of the Commission which has not been vacated by the four subsequent orders of the Commission dated January 7, 1966, March 17, 1966, April 13, 1966, and April 13, 1966, respectively.

As this Court ruled in *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950):

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our

> decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss [citing numerous cases]. That was said in *Duke Power Co.* v. *Greenwood County*, 299 U.S. 259, 267, to be 'the duty of the appellate court.'"

As shown in the cases cited by the Court in *Munsingwear*, the procedure followed by this Court when an action for judicial review of an administrative order becomes moot is the entry of an order vacating the judgment of the court below and remanding the case to that court with directions to dismiss the complaint as moot. *S.E.C.* v. *Philadelphia Co.*, 337 U.S. 901 (1949); *S.E.C.* v. *Long Island Lighting Co.*, 325 U.S. 833 (1945).

This procedure was followed in No. 143, *Baltimore and Ohio R. Co.* v. *Atchison, Topeka & Santa Fe R. Co.*, 383 U.S. 832. The Judgment below should now also be vacated to the further extent that the original orders of the Commission which are the subject of this action have been vacated by the Commission itself in its orders attached hereto as Appendices B, C, D and E because, to that further extent, the case has become moot. Accordingly, an order should be entered in the appeal of the United States and the Commission (No. 576), vacating the Judgment below to the extent that case has become moot. Such action will not affect the appeal in No. 576 as respects the portion of the Commission's original orders which have not been vacated by the Commission itself. Nor will such action in any respect affect the divisions which are still in controversy in No. 159, *Chicago & North Western R. Co.* v. *Atchison, Topeka & Santa Fe R. Co.*

WHEREFORE, it is requested that this Court enter an order in No. 576 vacating the Judgment of the District Court as respects the portions of the orders of the Interstate Com-

merce Commission dated March 21, 1966 and December 31, 1966, which have been vacated by the Commission in its subsequent orders dated January 7, 1966, March 17, 1966, April 13, 1966, and April 13, 1966, respectively, and, to that extent, remanding the cause to the District Court with instructions to dismiss the case as moot.

Respectfully submitted,

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June 2, 1966

Appendix A

LIST OF APPELLEE RAILROADS

The Atchison, Topeka and Santa Fe Railway Company
Amador Central Railroad Company
The Arcata and Mad River Rail Road Company
Beaver, Meade and Englewood Railroad
Butte, Anaconda & Pacific Railway Company
California Western Railroad
Camas Prairie Railroad Company
Camino, Placerville & Lake Tahoe Railroad Company
Central California Traction Company
Colorado and Wyoming Railway Company
The Denver and Rio Grande Western Railroad Company
Great Northern Railway Company
Gulf, Colorado and Santa Fe Railway Company
Holton Inter-Urban Railway
Inter-California Railway Company
Klamath Northern Railway Company
Longview, Portland & Northern Railway Company
Los Angeles Junction Railway Company
McCloud River Railway Company
Magma Arizona Railroad Company
Missouri-Kansas-Texas Railroad Company
Modesta and Empire Traction Company
Nacozari Rail Road Company
Nevada Northern Railway Company
Northern Pacific Railway Company
Northwestern Pacific Railroad Company
Oregon, California & Eastern Railway Company
Oregon Electric Railway Company
Oregon Pacific and Eastern Railway Company
Oregon Trunk Railway
Pacific Coast R. R. Co.
Pacific Electric Railway Company
Panhandle and Santa Fe Railway Company
Petaluma and Santa Rosa Railroad Company
Portland Traction Company
Quanah, Acme & Pacific Railway Company
Sacramento Northern Railway Company
Salt Lake, Garfield and Western Railway Company
San Diego & Arizona Eastern Railway Company

Santa Maria Valley Railway Company
Sierra Railroad Company
Southern Pacific Company
Spokane International Railroad Company
Spokane, Portland and Seattle Railway Company
St. Louis-San Francisco Railway Company
Stockton Terminal and Eastern Railroad
Sunset Railway Company
Tidewater Southern Railway Company
Tijuana and Tecate Railway Company
Tooele Valley Railway Company
Trona Railway Company
Tucson, Cornelia and Gila Bend Railroad Company
Union Pacific Railroad Company
Utah Railway Company
Ventura County Railway Company
Visalia Electric Railroad Company
Walla Walla Valley Railway Company
The Western Pacific Railroad Company
Yakima Valley Transportation Co.
Yreka Western Railroad Company

Appendix B

ORDER

SERVICE DATE
JANUARY 17, 1966

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 7th day of January, A.D. 1966.

No. 31503*

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

It appearing, That by reports and orders of March 21, 1963, 321 I.C.C. 17, (as clarified by order of June 20, 1963) and December 31, 1963, 322 I.C.C. 491, the Commission prescribed (1) in appendices B and B-1 thereof divisions of joint interterritorial rates on transcontinental traffic moving between official (or eastern) and transcontinental territories (including Montana), and (2) in appendices C and C-1 thereof (a) the midwestern subdivisions of the western primary divisions of interterritorial rates between

* This order also embraces Docket No. 31503 (Sub-No. 1), Ahnapee & Western Railway Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 2), Chicago, Burlington & Quincy Railroad Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 3), Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Same, No. 31503 (Sub-No. 4), Louisville & Nashville Raidroad Company v. Akron, Canton & Youngstown Railroad Company, et al., and No. 31503 (Sub-No. 5), Cincinnati, New Orleans & Texas Pacific Railway Company v. Same.

official and transcontinental territories prescribed in appendices B and B-1 and (b) the primary divisions of joint intraterritorial rates on traffic moving between midwestern and mountain-Pacific territories, to become effective on July 1, 1963, and, as modified, on March 30, 1964, respectively.

It further appearing, That the western railroad petitioners herein thereafter filed an action in the United States District Court for the southern District of California, Central Division, docketed as Civil Action No. 63-745-EC; to set aside, enjoin, annul, and suspend the orders of the Commission described above and said court issued a restraining order on June 27, 1963, and judgments of interlocutory injunction on August 6, 1963, and March 24, 1964, respectively, enjoining *pendente lite* the said orders of the Commission, subject to specified conditions.

It further appearing, That the said District Court on February 17, 1965, made its judgment setting aside said orders and remanded the cause to the Commission for further proceedings, and contemporaneously made and entered its orders staying judgment for 60 days from said date, and, if within that period a notice or notices of appeal to the Supreme Court were filed, until final disposition or termination of such appeal or appeals; and providing that during the said period or periods the judgment for interlocutory injunction should continue in full force and effect.

It further appearing, That within the said 60 days period notices of appeal were filed in the Supreme Court of the United States and were thereafter docketed as Nos. 143, 159, and 576, October Term, 1965, now pending.

It further appearing, That the aforesaid orders of the Commission thus did not become effective as made and that these orders have at all times been and still are under continuous restraint.

It further appearing, That by an agreement dated September 29, 1965, the eastern railroad petitioners and western railroad petitioners as shown in revised appendices I and II to their petition filed on October 20, 1965, have agreed upon divisions of joint rates on freight traffic between points on the petitioning Eastern lines and points in mountain-Pacific territory to be applied in lieu of the divisions prescribed by the orders of the Commission.

And it further appearing, That an agreement was made on November 19, 1965, by and between the Chicago & Eastern Illinois Railroad Company and the mountain-Pacific railroads as to the divisions of joint rates on transcontinental traffic involving the participation of the Chicago & Eastern Illinois Railroad Company and, accordingly, the latter railroad has withdrawn its opposition to the granting of the relief here sought.

Upon consideration of the record on the above entitled proceedings and a petition filed on October 20, 1965, for leave to file under Rule 1.101(e) of the General Rules of Practice a joint petition attached to said petition by the eastern railroad petitioners named in revised appendix I and by western railroad petitioners named in revised appendix II seeking a partial vacation of the said orders of March 21, 1963, and December 31, 1963, and of the replies thereto, the supplemental statements filed in connection therewith, the withdrawal of opposition to the said petition by the Chicago & Eastern Illinois Railroad Company by its telegram dated November 20, 1965, and the letter dated November 22, 1965, by the petitioners consenting to the deletion of item (b) of the exceptions to the prayer of the said joint petition, and for good cause appearing:

It is ordered, That the petition for leave to file said petition be, and it is hereby, granted; and upon consideration of said petition for partial vacation of the outstanding

orders herein, said petition be, and it is hereby, granted, therefore:

It is further ordered, That the orders of March 21, 1963 (as clarified by order of June 20, 1963), and December 31, 1963, insofar as those orders prescribe primary divisions of joint all rail interstate rates for the transportation of property between points in official (or eastern) territory, on the one hand, and on the other, points in mountain-Pacific territory, as provided in appendices B and B-1 to the said reports of the Commission accompanying said orders to the extent that such joint rates apply from and to points on the lines of the petitioning eastern railroads named in revised appendix I and in addition the Chicago & Eastern Illinois Railroad Company, and points on the lines of petitioning western railroads named in revised appendix II, except (1) insofar as said orders prescribe divisions of joint rates (a) to or from stations in mountain-Pacific territory on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and (b) to or from stations on western and southern railroads in Group E-5 as defined in said reports, and (2) insofar as said orders prescribe in appendices B and B-1 of said reports primary divisions of joint interterritorial rates on traffic moving between official and transcontinental territories from which prescribed western primary divisions the subdivisions thereof accruing to the midwestern lines are determined as provided in appendices C(d) and C-1(d) of said reports, be, and they are hereby, vacated.

And it is further ordered, That in all other respects the said orders as modified shall remain unchanged until further order of the Commission.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

Appendix C

ORDER

SERVICE DATE
MARCH 28, 1966

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 17th day of March, A. D. 1966.

No. 31503*

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Upon consideration of the record in the above entitled proceedings and of a petition filed January 21, 1966 (dated January 20, 1966) with a letter of clarification dated January 22, 1966, by the mountain-Pacific railroads, for modification of the order dated January 7, 1966, and for good cause appearing:

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* This order also embraces Docket No. 31503 (Sub-No. 1), Ahnapee & Western Railway Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 2), Chicago, Burlington & Quincy Railroad Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 3), Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Same, No. 31503 (Sub-No. 4), Louisville & Nashville Railroad Company v. Akron, Canton & Youngstown Railroad Company, et al., and No. 31503 (Sub-No. 5), Cincinnati, New Orleans & Texas Pacific Railway Company v. Same.

It is ordered, That exception (1)(b) in the second ordering paragraph of said order of January 7, 1966, be, and it is hereby, modified to read as follows:

> to or from stations on the lines of Chicago and North Western Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, and Missouri Pacific Railroad Company in Group E-5 as defined in said reports.

By the Commission.

(SEAL)

H. NEIL GARSON
Secretary

Appendix D

ORDER.

SERVICE DATE
APRIL 25, 1966

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of April, A. D. 1966.

No. 31503*

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Upon consideration of the record in the above entitled proceedings and of a petition filed on March 2, 1966, for leave to file under rule 1.101(e) of the General Rules of Practice a joint petition attached to said petition by the eastern railroads and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company seeking modification of the order dated January 7, 1966, and for good cause appearing:

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* This order also embraces Docket No. 31503 (Sub-No. 1), Ahnapee & Western Railway Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 2), Chicago, Burlington & Quincy Railroad Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 3), Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Same, No. 31503 (Sub-No. 4), Louisville & Nashville Railroad Company v. Akron, Canton & Youngstown Railroad Company, et al., and No. 31503 (Sub-No. 5), Cincinnati, New Orleans & Texas Pacific Railway Company v. Same.

It is ordered, That the petition for leave to file said petition, be, and it is hereby, granted; and upon consideration of the said petition for modification of the order dated January 7, 1966, said petition, be, and it is hereby, granted, therefore:

It is further ordered, That the said order of January 7, 1966, be, and it is hereby, modified by the deletion therefrom of exception clause (1) (a) in the second ordering paragraph thereof.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

Appendix E

ORDER

SERVICE DATE
APRIL 25, 1966

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of April, A. D. 1966.

No. 31503*

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

It appearing, That by reports and orders of March 21, 1963, 321 I.C.C. 17 (as clarified by order of June 20, 1963) and December 31, 1963, 322 I.C.C. 491, the Commission prescribed (1) in appendices B and B-1 thereof divisions of joint interterritorial rates on transcontinental traffic moving between official (or eastern) and transcontinental territories (including Montana), and (2) in appendices C and C-1 thereof (a) the midwestern subdivision of the western primary divisions of interterritorial rates between official

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* This order also embraces Docket No. 31503 (Sub-No. 1), Ahnapee & Western Railway Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 2), Chicago, Burlington & Quincy Railroad Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 3), Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Same, No. 31503 (Sub-No. 4), Louisville & Nashville Railroad Company v. Akron, Canton & Youngstown Railroad Company, et al., and No. 31503 (Sub-No. 5), Cincinnati, New Orleans & Texas Pacific Railway Company v. Same.

and transcontinental territories prescribed in appendices B and B-1 and (b) the primary divisions of joint intra-territorial rates on traffic moving between midwestern and mountain-Pacific territories, to become effective on July 1, 1963, and, as modified, on March 30, 1964, respectively.

It further appearing, That the aforesaid orders of the Commission did not become effective as made, having been at all times and still are under continuous restraint by court order, pending review by the Supreme Court.

It further appearing, That by order of January 7, 1966, the Commission vacated said orders insofar as they prescribe primary divisions of joint all-rail interstate rates for the transportation of property between points in official (or eastern) territory, on the one hand, and on the other, points in mountain-Pacific territory to the extent therein specified and subject to the exceptions therein stated.

And it further appearing, That the midwestern railroads and the mountain-Pacific railroads, petitioners in the petition filed on January 24, 1966, and in addition the Chicago and Eastern Illinois Railroad Company have agreed upon divisions of joint rates on freight traffic between points on their lines to be applied in lieu of the divisions prescribed by the Commission.

Upon consideration of the record in the above-entitled proceedings and of a petition filed on January 24, 1966, for leave to file under Rule 1.101(e) of the General Rules of Practice a joint petition attached to said petition by the midwestern railroad petitioners named in appendix 1 to said petition, and in addition the Chicago and Eastern Illinois Railroad Company, and the mountain-Pacific railroad

petitioners named in appendix 2 to said petition, seeking partial vacation of the said orders of March 21, 1963, and December 31, 1963, the reply thereto, filed January 27, 1966, and the supplemental statements of mountain-Pacific railroads, filed February 14, 1966, and midwestern group of lines filed February 21, 1966, in connection therewith, and for good cause appearing:

It is ordered, That the petition for leave to file said petition be, and it is hereby, granted; and upon consideration of said petition for partial vacation of the outstanding orders herein, said petition be, and it is hereby granted, therefore:

It is further ordered, That the orders of March 21, 1963 (as clarified by order of June 20, 1963), and December 31, 1963, insofar as those orders prescribe (1) primary divisions and subdivisions of joint all-rail interstate rates for the transportation of property between all points in midwestern territory, on the one hand, and on the other, points in mountain-Pacific territory as provided in paragraphs (a), (b), and (c) of appendices C and C-1 to the said reports of the Commission accompanying said orders, and (2) subdivisions of western primary divisions of joint all-rail interstate rates for the transportation of property between all points in official (or eastern) territory, on the one hand, and on the other, points in mountain-Pacific territory as provided in paragraph (d) of appendices C and C-1 to the said reports of the Commission accompanying said orders, to the extent that such joint rates apply to shipments moving over the lines of petitioning midwestern railroads named in appendix 1 to said petition and in addition the Chicago and Eastern Illinois Railroad Company, and the lines of petitioning mountain-Pacific railroads named in appendix 2 to said petition, except insofar as said

orders prescribe in appendices C and C-1 divisions and subdivisions accruing to midwestern railroads not named in appendix 1 to said petition, be, and they are hereby, vacated.

And it is further ordered, That in all other respects the said orders as modified shall remain unchanged until further orders of the Commission.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)